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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 216

IDA S. AUSTIN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 111–115) is reported at 6 T. C. 593. The opinion of the Circuit Court of Appeals (R. 124–128) is reported at 161 F. 2d 666.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 12, 1947 (R. 123). A petition for rehearing was denied on June 3, 1947 (R. 130). The petition for a writ of certiorari was filed on July 19, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Taxpayer made a gift to her three adult children of a demand note and earned but unpaid interest thereon. Was that portion of the interest earned at the date of the gift and actually paid to the children in the same year as the gift, income to the taxpayer under Section 22 (a) of the Internal Revenue Code?

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal services * * *; also from interest, rent, dividends, securities, * * *. (26 U. S. C. 1940 ed., Sec. 22.)

STATEMENT

The relevant facts as found by the Tax Court may be summarized as follows:

On June 1, 1932, taxpayer's husband, W. J. Austin, gave her a demand negotiable promissory note of which she was payee, in the amount of $76,128 (R. 42). Interest was paid on the note on December 31, 1932, in the amount of $4,558.46, and on September 16, 1940, in the amount of

$2,500. No principal was paid. On November 16, 1940, there was unpaid $71,569.54 principal, and interest to that date of $43,320.04. On that date, taxpayer gave the note to her three children who were of legal age. She filed a gift tax return for the year 1940 and paid a gift tax on the gift. On December 4, 1940, W. J. Austin was killed in an airplane accident. (R. 112.)

The estate of W. J. Austin contained assets ample to pay the note. On December 31, 1940, the executor of the estate of W. J. Austin paid $39,904.31 interest, in equal parts to each of the children. In June 1941, he paid $3,415.73 further interest. (R. 112.) At the time of the gift, the taxpayer had no expectation that the note would be paid, in the sense that she gave the matter no thought, and the question of collectibility of the note did not enter her mind, and was given no consideration by her (R. 113).

The Commissioner of Internal Revenue included in taxpayer's income for 1940 the accumulated interest in the amount of $43,320.04 which taxpayer gave to her children (R. 6). The Tax Court upheld the Commissioner's determination as to the $39,904.31 in interest paid to the children in the tax year, but found for the taxpayer as to the interest paid to the children during the next year (R. 111–116). The Circuit Court of Appeals affirmed (R. 124–128).

ARGUMENT

The decision below is in accordance with, and required by, the well-settled principle that an assignment of the right to receive income is ineffectual to relieve the assignor of tax liability. *Harrison* v. *Schaffner,* 312 U. S. 579; *Helvering* v. *Horst,* 311 U. S. 112; *Helvering* v. *Eubank,* 311 U. S. 122; *United States* v. *Joliet & Chicago R. Co.,* 315 U. S. 44; *Burnet* v. *Leininger,* 285 U. S. 136; *Lucas* v. *Earl,* 281 U. S. 111. *Cf. Helvering* v. *Clifford,* 309 U. S. 331; *Commissioner* v. *Tower,* 327 U. S. 280; *Lusthaus* v. *Commissioner,* 327 U. S. 293. Here the taxpayer had the right to $43,320 in interest, which she could have collected but chose to give to her children by assigning the interest and principal amount of the note as well. During the same year, she had the satisfaction of seeing her children, the objects of her bounty, collect the fruit that grew on the tree while she owned it. This economic satisfaction, under the doctrine of the *Horst* case, is income to the donor. And it is of no consequence, under such a doctrine, that the donor is on a cash and not an accrual basis.

The decision below conflicts neither with *Blair* v. *Commissioner,* 300 U. S. 5, nor with *Pearce* v. *Commissioner,* 315 U. S. 543. In *Blair,* the income sought to be taxed to the assignor was

earned after the assignment of the corpus. This Court distinguished the case on that ground in *Helvering* v. *Horst, supra,* p. 119. Similarly, the reference in the *Pearce* case to the transfer of the corpus by the assignor (p. 554) was in connection with income earned after the assignment. When, as here, the income is earned on property of the taxpayer, she cannot avoid the tax thereon. The court below has not held the taxpayer liable for taxes with respect to income earned on property of the donees.

Although we believe that *Sunnen* v. *Commissioner,* 161 F. 2d 171 (C. C. A. 8th), has been incorrectly decided and we have petitioned for certiorari (No. 227, this Term), the case presents no conflict here. It was there held that royalties paid to the assignee of royalty contracts were not income to the assignor. The court treated the royalty contracts as income producing property analogous to a lease of real property and the royalty analogous to rent. Granting the accuracy of that assumption, with which we are not here concerned, the result is not inconsistent with the decision below since it does not appear that any of the royalties were earned before the assignment of the royalty contracts.

CONCLUSION

The decision below is correct. There is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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